

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4
5 In re cases filed by
6 FRANKLIN H. WRIGHT,
7 Plaintiff.

No. C 16-505 CW

ORDER TO SHOW
CAUSE WHY COURT
SHOULD NOT ISSUE
PRE-FILING ORDER

8 _____ /
9
10 Since January 2011, Plaintiff has filed fourteen cases in
11 federal district court, including ten in the Northern District of
12 California, and nine federal appeals. See Addendum. In most of
13 these cases, including all cases filed in the Northern District
14 of California, Wright sought to proceed in forma pauperis. In
15 light of this litigation history, the Court considers sua sponte
16 whether it is necessary and appropriate to impose a pre-filing
17 order on Plaintiff.

18 LEGAL STANDARDS

19 Federal courts have the inherent power "to regulate the
20 activities of abusive litigants by imposing carefully tailored
21 restrictions under the appropriate circumstances." DeLong v.
22 Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990). As noted by the
23 Ninth Circuit, district courts "bear an affirmative obligation to
24 ensure that judicial resources are not needlessly squandered on
25 repeated attempts by litigants to misuse the courts." O'Loughlin
26 v. Doe, 920 F.2d 614, 618 (9th Cir. 1990). Nonetheless, pre-
27 filing review orders should rarely be used. Moy v. United
28 States, 906 F.2d 467, 470 (9th Cir. 1990). A pre-filing order

1 "cannot issue merely upon a showing of litigiousness." Id. The
2 plaintiff's claims must not only be numerous, but also be
3 patently without merit. Id.

4 The Ninth Circuit has established four guidelines "to
5 maintain this delicate balance between broad court access and
6 prevention of court abuse." O'Loughlin, 920 F.2d at 617. Before
7 a court enters a vexatious litigant order: (1) the plaintiff must
8 be given adequate notice to oppose entry of the order; (2) the
9 court must present an adequate record by listing the case filings
10 that support its order; 3) the court must make substantive
11 findings of frivolousness or harassment; and (4) the order must
12 be narrowly tailored to remedy only the plaintiff's particular
13 abuses. Id.; DeLong, 912 F.2d at 1147-49.

14 DISCUSSION

15 I. Notice

16 Before a pre-filing order may be entered, due process
17 requires that the litigant be provided with notice and an
18 opportunity to oppose the order. De Long, 912 F.2d at 1147.
19 Accordingly, the Court is issuing this Order to Show Cause prior
20 to entering any pre-filing order.

21 II. Adequate Record for Review

22 The district court must create a record for review which
23 includes a listing of all the cases and motions that led it to
24 conclude that a pre-filing order was needed. The record must at
25 least show, in some manner, that the litigant's activities were
26 numerous or abusive. See id.

27 The Court has attached an Addendum to this order that lists
28 all the cases Plaintiff has filed in the federal courts that have

1 led the Court to conclude that a pre-filing order may be
2 necessary. The filings are numerous.

3 III. Substantive Findings of Frivolousness or Harassment

4 The district court must make substantive findings as to the
5 frivolous or harassing nature of the litigant's actions. It must
6 find the litigant's claims frivolous after looking at both the
7 number and content of the filings, or, alternatively, find that
8 the claims show a pattern of harassment. See id. at 1148.

9 Here, Plaintiff's claims are frivolous. Generally, courts
10 have dismissed Plaintiff's complaints as frivolous or failing to
11 state a claim under 28 U.S.C. § 1915(e)(2), by granting a motion
12 to dismiss in favor of the defendants, or for failure to
13 prosecute following a denial of in forma pauperis status. Courts
14 have also cited failure to follow Federal Rule of Civil Procedure
15 8 and lack of federal jurisdiction. Indeed, in some cases,
16 courts have granted Plaintiff an opportunity to amend, only to
17 conclude later that Plaintiff did not correct the problems in an
18 amended complaint. None of Plaintiff's complaints filed in the
19 Northern District of California survived the motion to dismiss
20 stage.

21 Because so many courts have found Plaintiff's claims
22 frivolous, this Court finds that Plaintiff's actions are
23 frivolous overall.

24 IV. Breadth of Order

25 The district court must narrowly tailor the proposed pre-
26 filing order to "closely fit the specific vice encountered."
27 DeLong, 912 F.2d at 1148. An order preventing a litigant from
28 filing any further actions without leave of court, for example,

1 ordinarily is overly broad and cannot stand. See id.; Moy, 906
2 F.2d at 470-71.

3 When the Ninth Circuit held in Moy that an order preventing
4 a vexatious litigant from filing any actions without leave of the
5 court was overly broad, the court specifically noted, "There is
6 no evidence on this record that Moy has a general history of
7 litigious filing." Moy, 906 F.2d at 471. Similarly, in DeLong,
8 where the Ninth Circuit held that a similar order was overly
9 broad, the litigant's history involved repeated filings related
10 to a specific dispute with particular defendants. DeLong, 912
11 F.2d at 1145-46. On that record, the district court likewise
12 could not have concluded that DeLong had a general history of
13 litigious filing.

14 Here, by contrast, Plaintiff has filed cases against many
15 different Defendants, including governmental actors, governmental
16 entities, businesses, universities and law firms, alleging
17 different types of claims, including state law tort claims, state
18 law contract claims, constitutional claims and petitions for
19 writs of mandamus. However, there are some common threads.
20 First, Plaintiff frequently alleges that various actors owe him
21 some sort of duty under, for example, California Business and
22 Professions Code section 6068 or general fiduciary duty law.
23 Second, Plaintiff invokes the Federal Tort Claims Act frequently
24 and attaches "claim letters" to his Complaints. Third, Plaintiff
25 frequently refers to previously-filed cases listed in the
26 Addendum, as well as state court cases, his bankruptcy, claims
27 against former employers, and claims against the University of
28 Chicago, where he was allegedly previously enrolled. Fourth,

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1 Plaintiff often seeks to compel Defendants to answer questions,
2 perform some investigation or consider a policy proposal,
3 sometimes by requesting a writ of mandamus. Fifth, Plaintiff has
4 filed lawsuits whose claims relate to obstructing his legal
5 process. Sixth, Plaintiff's complaints evince a general
6 understanding that his hardships are the result of several bodies
7 conspiring "as some sort of unbeknownst-to-Plaintiff governmental
8 and legal training." Case No. 14-353, Docket No. 56 at 31.

9 On this record, the Court concludes that Plaintiff has a
10 general history of litigious filing. This history justifies a
11 general order requiring pre-filing review by this Court of any
12 action filed by Plaintiff. Unless Plaintiff shows cause why it
13 should not be issued, the Court intends to issue the following
14 pre-filing order, which will be applicable to any action
15 Plaintiff files in this Court:

16 "IT IS HEREBY ORDERED that the Clerk of this Court shall not
17 accept for filing any further complaints filed by Franklin Wright
18 a.k.a. Jesse Swartz, until that complaint has first been reviewed
19 by the Court. If the complaint is related to any of the
20 following subject matters or legal theories:

- 21 (1) Violation of some duty owed;
- 22 (2) Mention of the Federal Tort Claims Act or attachment of
23 Federal Tort Claims Act "claim letters";
- 24 (3) Other cases previously filed in federal courts;
- 25 (4) Requests to compel any defendant to answer questions,
26 perform investigations or evaluate policy proposals;
- 27 (5) Obstruction of Plaintiff's legal process or legal
28 research; or

1 (6) Conspiracies to "train" Plaintiff,
2 it will not be filed unless it presents cognizable claims. All
3 cases filed by Plaintiff shall be forwarded to the undersigned
4 for pre-filing review."

5 Within thirty days of the date of this Order, Plaintiff may
6 file a statement showing cause why this order should not be
7 issued. If he fails to file the statement or if he fails to show
8 cause why the order should not be filed, the order shall be
9 entered and it shall be applicable in all future actions filed by
10 Plaintiff in this Court.

11 IT IS SO ORDERED.

12 Dated: May 10, 2016



13 CLAUDIA WILKEN
United States District Judge

United States District Court
Northern District of California

ADDENDUM

1	<u>Northern District of Ohio</u>		
2	11-0038	Swartz v. McInerney, et al.	Filed 1/6/2011
3	11-0168	Swartz v. Oracle Corp., et al.	Filed 1/25/2011
4	11-0221	Swartz v. Ariba, Inc., et al.	Filed 1/31/2011
5	<u>Northern District of Illinois</u>		
6	15-10185	Swartz v. U.S. Dep't of Justice, et al.	Filed 11/9/2015
7	<u>Northern District of California</u>		
8	13-4457	Wright v. Stanford University	Filed 9/26/2013
9	13-5994	Wright v. United States	Filed
10	12/30/2013		
11	14-0353	Wright v. U.S. Interagency Council on Homelessness, et al.	Filed 1/23/2014
12	14-5525	Wright v. McGovern, et al.	Filed
13	12/18/2014		
14	15-0283	Wright v. San Francisco, et al.	Filed 1/21/2015
15	15-3204	Wright v. U.S. Dep't of Homeland Sec.	Filed 7/10/2015
16	15-3647	Wright v. SBO Pictures Inc., et al.	Filed 8/10/2015
17	16-0505	Wright v. Stretch, et al.	Filed 1/29/2016
18	16-0513	Wright v. Perez, et al.	Filed 1/29/2016
19	16-1371	Wright v. U.S. Dep't of Educ.	Filed 3/21/2016
20	<u>Sixth Circuit</u>		
21	11-3463	Swartz v. Oracle Corp.	Filed 4/27/2011
22	11-3466	Swartz v. Ariba, Inc.	Filed 4/27/2011
23	<u>Ninth Circuit</u>		
24	13-17439	Wright v. Stanford University	Filed
25	11/22/2013		
26	14-16282	Wright v. U.S. Interagency Council on Homelessness, et al.	Filed 7/7/2014
27	14-16563	Wright v. U.S. Interagency Council on Homelessness, et al.	Filed 8/11/2014
28	15-15052	Wright v. U.S. Interagency Council on Homelessness, et al.	Filed 1/13/2015
29	15-80052	In re Franklin Wright	Filed 3/27/2015
30	15-15615	Wright v. McGovern, et al.	Filed 3/30/2015
31	15-15842	Wright v. San Francisco, et al.	Filed 4/23/2015

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANKLIN H. WRIGHT,

Plaintiff,

v.

BRIAN STRETCH, et al.,

Defendants.

Case No. 16-cv-00505-CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 10, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Franklin H. Wright
1001 Polk St., #64
San Francisco, CA 94109

Dated: May 10, 2016

Susan Y. Soong
Clerk, United States District
Court

By: Nichole Peric
Nichole Peric, Deputy Clerk to
the Honorable CLAUDIA WILKEN